IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 48 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

M/S. KASHIRAM OMPRAKASH

Appearance:

1. INCOME TAX REFERENCE No. 48 of 1992
MR MANISH R BHATT for the Applicant
SERVED BY RPAD - (N) for Respondent

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 27/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The following questions have been raised and referred by the Income Tax Appellate Tribunal, Ahmedabad Bench "C", Ahmedabad under Section 256(1) of the Income Tax Act, 1961 (the Act) for the opinion of this Court :

"(I) By Revenue :

(1) Whether, the appellate Tribunal is right in law and on facts in cancelling the penalty levied by I.T.O. u/s 271(1)(a) of the I.T.Act, 1961 amounting to Rs.15,136/-?

(2) Whether, the Appellate Tribunal is right in law and on facts in arriving at a conclusion that the assessee's conduct cannot be said to be contumacious or involving mens rea?

(II) By Assessee :

(1) Whether, on facts and in the circumstances of the case, the Tribunal was justified in law in holding that penalty under Section 271(1)(a) of the Act was leviable thereby reversing the decision of the learned CIT (A)?

(2) Whether, on facts and in the circumstances of the case, the Tribunal was justified in law in holding that explanation furnished by the applicant regarding cause for delay in filing the return was without substance when on facts of the case the Tribunal has decided the same question in favour of the applicant for the A.Y. 1976-77 & 1977-78?

(3) Whether, on facts and in the circumstances of the case, the Tribunal has material to hold that levy of penalty was justified?

(4) If the answers to the above questions are in the affirmative, then whether the Tribunal was right in law in upholding the period of delay as determined by the learned Income Tax Officer with

effect from 1-8-1978 and when the final application for extension of time was rejected by the learned I.T.O. on 29-9-1978 and communicated to the applicant on 7-10-1978 and also August, 1979 month of filing return of income?"

2. The reference at the instance of the revenue is for Assessment Year 1979-80. Heard Mr.M.R.Bhatt, the learned senior standing counsel for the applicant revenue. The return of income for Assessment Year 1979-80 was due on 30th July 1979, but was filed on 30th December 1980. The assessing Officer rejected the explanation of the assessee and levied penalty amounting to Rs.15,136=00 under Section 271(1)(a) of the Act. The C.I.T. (Appeals) upheld the contentions of the assessee and cancelled the penalty. The Tribunal has confirmed the order made by the C.I.T. (Appeals).

3. Mr.Bhatt has made strenuous effort to persuade the Court to take a different view. However, on going through the order of the Tribunal dated 23rd April 1990, it is apparent that the Tribunal has come to the conclusion after appreciating the evidence on record and considering the facts of the case, that the conduct of the assessee could not be said to be contumacious or involve mens rea. In other words, the Tribunal has found on facts that the assessee was prevented by a reasonable cause from furnishing the return of income by due date.

4. In light of the aforesaid findings recorded by the Tribunal, there is no infirmity in the order of the Tribunal and the questions referred to the Court at the instance of the revenue are answered in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference at the instance of the assessee pertains to Assessment Year 1978-79. The questions are left unanswered and the reference at the instance of the assessee is returned unanswered considering that the assessee - applicant is not present when the matter is called out, nor is the assessee represented.

6. In the result, both the references stand disposed of accordingly.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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